

## Message Text

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DRAFTED BY EB/CBA/BP:DVLABRIE:JB

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TO AMEMBASSY PARIS PRIORITY

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NESCO

E.O. 11652: N/A

TAGS: EIND, OCON

SUBJECT: U.S. POSITION ON AGENDA ITEM 31 FOR 18TH UNESCO

GENERAL CONFERENCE, OCTOBER 17 - NOVEMBER 22, 1974

PLEASE PASS TO USDEL BY 9:00 A.M., OCTOBER 21.

-- US POSITION ON AGENDA ITEM 31: DESIRABILITY OF ADOPTING  
ONE OR MORE ADDITIONAL PROTOCOLS TO THE AGREEMENT ON THE  
IMPORTATION OF EDUCATIONAL, SCIENTIFIC AND CULTURAL  
MATERIALS - DRAFTING OF A PROTOCOL TO THE FLORENCE AGREE-  
MENT IS AS FOLLOWS:

-- BACKGROUND: IN ACCORDANCE WITH A RESOLUTION ADOPTED  
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BY THE GENERAL CONFERENCE AT ITS SEVENTEENTH SESSION, A

MEETING OF GOVERNMENTAL EXPERTS TO REVIEW THE APPLICATION OF THE TWO UNESCO AGREEMENTS (FLORENCE AND BEIRUT) ON THE FREE FLOW OF EDUCATIONAL, SCIENTIFIC AND CULTURAL MATERIALS

WAS HELD IN GENEVA FROM 26 NOVEMBER TO 3 DECEMBER 1973. THE BASIC QUESTION WAS WHETHER THESE AGREEMENTS SHOULD BE EXTENDED TO COVER NEW CATEGORIES OF EDUCATIONAL, SCIENTIFIC AND CULTURAL MATERIALS INCLUDING SOUND RECORDINGS.

-- THE EXPERTS CONCLUDED THAT MODIFICATION OF THE BEIRUT AGREEMENT WAS NOT NECESSARY SINCE A LIBERAL INTERPRETATION OF ITS PROVISIONS WOULD SUFFICE, BUT RECOMMENDED THAT THE

DIRECTOR-GENERAL SUBMIT TO THE GENERAL CONFERENCE AT ITS EIGHTEENTH SESSION A PROPOSAL THAT ONE OR MORE PROTOCOLS TO THE FLORENCE AGREEMENT OF 1950 SHOULD BE FORMULATED.

-- IN RESPONSE TO THIS REQUEST THE DIRECTOR-GENERAL SUBMITTED TO THE EXECUTIVE BOARD A PRELIMINARY STUDY OF THE TECHNICAL AND LEGAL ASPECTS OF THE QUESTION OF THE POSSIBLE PREPARATION OF ONE OR MORE PROTOCOLS (18 C/32 ANNEX). THE BOARD DECIDED TO INCLUDE THE FOLLOWING ITEM IN THE PROVISIONAL AGENDA OF THE EIGHTEENTH SESSION OF THE GENERAL CONFERENCE: "DESIRABILITY OF ADOPTING ONE OR MORE PROTOCOLS TO THE AGREEMENT ON THE IMPORTATION OF EDUCATIONAL, SCIENTIFIC AND CULTURAL MATERIALS".

(1) THE GENERAL CONFERENCE SHOULD DECIDE WHETHER THE ADDITION OF ONE OR MORE PROTOCOLS TO THE FLORENCE AGREEMENT IS DESIRABLE, AND, THE SCOPE OF THE PROTOCOLS.

(2) IT MUST ALSO DECIDE WHETHER A SPECIAL COMMITTEE OF GOVERNMENTAL EXPERTS SHOULD BE CONVENED TO PREPARE A FINAL DRAFT TEXT TO BE SUBMITTED TO THE GENERAL CONFERENCE AT ITS NINETEENTH SESSION IN 1976.

-- POSITION: (1) IF DISCUSSIONS WITH KEY DELEGATIONS (INCLUDING PARTICULARLY UNITED KINGDOM AND FEDERAL REPUBLIC OF GERMANY) INDICATE THERE IS A MEMBER STATE CONSENSUS IN FAVOR OF THE ADOPTION OF SUCH A PROTOCOL, THE LIMITED OFFICIAL USE

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USDEL MAY SUPPORT A PROPOSAL THAT A SPECIAL COMMITTEE OF GOVERNMENTAL EXPERTS BE CONVENED TO PREPARE A FINAL DRAFT TEXT OF A PROTOCOL ACCORDING TO SOUND RECORDINGS THE SAME TREATMENT AS BOOKS. IN SO DOING THE USDEL SHOULD MAKE CLEAR THAT UNITED STATES ACCEPTANCE WOULD BE CONDITIONED ON: 1) WIDESPREAD ACCEPTANCE OF THE PROTOCOL BY OTHER COUNTRIES, AND 2) THE INCLUSION OF A SAFEGUARD CLAUSE SIMILAR TO THAT CONTAINED IN THE PROTOCOL ANNEXED

TO THE PRESENT FLORENCE AGREEMENT. THE US WOULD NOT OBJECT TO SUCH A SAFEGUARD CLAUSE BEING MADE AVAILABLE TO ALL SIGNATORIES OF THE NEW PROTOCOL.

(2) IN VIEW OF THE SUBSTANTIAL UNITED STATES EXPORT BALANCE OF TRADE IN SOUND RECORDINGS AND MEMBER STATE CONCERN OVER THE "UNIDIRECTIONAL" FLOW OF MATERIALS UNDER THE PRESENT AGREEMENT, IT WOULD NOT APPEAR GOOD TACTICALLY FOR THE USDEL TO TAKE INITIATIVES IN THE FORMAL MEETINGS IN URGING OTHER DELEGATIONS TO SUPPORT SUCH A PROTOCOL OR TO PRESENT A MOTION CALLING FOR A GROUP OF EXPERTS TO BE CONVENED TO DRAW UP A DRAFT FINAL TEXT. MOREOVER, SINCE

SUCH CONCEPTS ARE SUSCEPTIBLE TO WIDELY VARYING INTERPRETATION AND ARE THEREFORE NOT EASILY DEFINABLE, USDEL SHOULD SEEK TO AVOID SUGGESTING THAT EXTENSION OF BOOK TREATMENT TO SOUND RECORDINGS BE BASED SOLELY ON "CULTURAL" OR "ARTISTIC" CRITERIA.

(3) FURTHER, THE USDEL MAY GENERALLY BE RECEPTIVE TO PRACTICAL MEASURES TO REDUCE OR REMOVE BARRIERS TO THE FREE FLOW OF OTHER EDUCATIONAL, SCIENTIFIC AND CULTURAL MATERIALS (E.G., MOTION PICTURES) IF THERE IS A CONSENSUS FOR THESE MEASURES.

(4) AS GUIDELINES FOR THE WORK OF THE COMMITTEE OF GOVERNMENTAL EXPERTS, USDEL MAY SUPPORT THE GUIDELINES RECOMMENDED BY THE 1973 INTERGOVERNMENTAL CONFERENCE OF EXPERTS AT GENEVA (26 NOVEMBER TO 3 DECEMBER 1973) AS SET OUT IN PARAGRAPH 26 OF TAB (NUMBER 18 C/32 IN POSITION PAPER), OR SIMILAR DIRECTIVES.

-- COMMENTS: THE UNITED STATES GOVERNMENT FAVORS THE LIMITED OFFICIAL USE

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CONSIDERATION BY THE GENERAL CONFERENCE OF A PROTOCOL TO EXTEND THE PRIVILEGES UNDER ANNEX A OF THE FLORENCE AGREEMENT TO SOUND RECORDINGS.

IT IS FELT THAT SOUND RECORDINGS, WHICH ARE NOW PROTECTED UNDER THE UNITED STATES COPYRIGHT LAW, ARE INCREASINGLY IMPORTANT INSTRUMENTS FOR THE WIDESPREAD DISSEMINATION OF EDUCATIONAL INFORMATION AND CULTURAL MATERIALS (E.G. MUSIC). THE PRESENT IMPORT DUTIES, TARIFF AND CUSTOMS REGULATIONS OBSTRUCT THE FREE EXCHANGE BETWEEN COUNTRIES OF THESE MATERIALS.

-- THE USDEL SHOULD BE AWARE OF POSSIBLE POLITICAL PROBLEMS ATTENDANT TO THIS PROPOSAL. OUR WILLINGNESS TO SIGN SUCH A PROTOCOL WOULD BE CONDITIONED UPON THE

INCLUSION OF AN ADEQUATE SAFEGUARD CLAUSE FOR THE U.S.  
AND ANY OTHER COUNTRY THAT WISHED TO TAKE ADVANTAGE OF  
IT BECAUSE OF "SERIOUS INJURY TO A DOMESTIC INDUSTRY".  
SUCH A CLAUSE MIGHT MAKE THE PROPOSED PROTOCOL ACCEPTABLE  
TO OTHER CONTRACTING STATES, ESPECIALLY DEVELOPING COUN-  
TRIES. OUR ADHERENCE WOULD ALSO DEPEND UPON THE WILLING-  
NESS OF OTHER MAJOR MARKET COUNTRIES TO SIGN. FINALLY,  
THE DEVELOPING COUNTRIES MAY NOT FAVOR THIS APPROACH, SINCE  
IT WOULD ENCOURAGE A ONE-WAY FLOW OF MATERIALS FROM  
DEVELOPED COUNTRIES. KISSINGER

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